

REMARKS

The application has been reviewed in view of the Office Action mailed on June 23, 2005. Claims 5-7 and 22-27 are pending in the application with claims 5, 11, and 24 being in independent form.

I. Rejection of Claims Under 35 U.S.C. §102(b)

Claims 5-7, 22, and 24-27 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,514,133 to Golub et al (Golub '133). Golub discloses an access device for use in endoscopic surgery.

It is respectfully submitted that the present invention as claimed is patentably distinguishable from Golub '133. For example, Golub '133 fails to teach or suggest the recited "seal comprising a fabric material." Fabric is defined as a "cloth or a material that resembles a cloth." Cloth is defined as "a pliable material made usually by weaving, felting, or knitting material or synthetic fibers and filaments." (These definitions are provided in Merriam-Webster Online. Copies of the pages with the definitions are provided herein). Fabric includes woven materials incorporating fibers and filaments. This definition of "fabric" is consistent with the description and use of the term "fabric" in the specification (see, e.g., the discussion of the fabric at page 8, lines, 12-20 of the specification which states "The fabric material adds significant benefits to the seal, including, e.g. strength, durability, etc."). As stated by the Examiner, Golub '133 discloses a seal formed "of a material such as silastic, foam, or cellular polyethylene." The seal disclosed by Golub '133 does not include a fabric material, as required by claim 5-7, 22, and 24-27. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 5, 10, 24, and 25 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,545,179 to Williamson IV et al (Williamson '179). It is respectfully submitted that the present invention as claimed is patentably distinguishable from Williamson '179. For example, Williamson '179 fails to teach or suggest the recited "seal comprising a fabric material." Williamson '179 discloses an elastomeric seal element within an access assembly. Elastomeric is defined as "any of various elastic substances resembling rubber." As mentioned hereinbefore, fabric includes woven materials incorporating fibers and filaments. The seal disclosed by Williamson '179 does not include a fabric material, as required by claim 5-7, 22, and 24-27. Accordingly, withdrawal of this rejection is respectfully requested.

II. Rejection of Claims Under 35 U.S.C. §103

Claims 8 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,514,133 to Golub et al. in view of U.S. Patent No. 5,545,179 to Williamson et al (Williamson et al.).

Claims 8 and 9 ultimately depend from independent claim 5 and are at least patentable for the reasons independent claim 5 is patentable as discussed hereinabove. Accordingly, withdrawal of the rejection is respectfully requested.

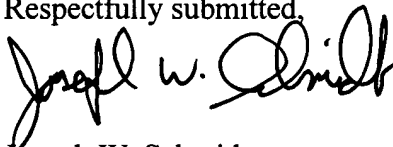
III. Double Patenting

Claims 5-17 and 22-27 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,702,787. A terminal disclaimer is being submitted herewith.

IV. Conclusion

In view of the above remarks, each of the pending claims is believed to be allowable over the art of record. Therefore, reconsideration and withdrawal of the outstanding rejection is respectfully requested and allowance of the claims is earnestly solicited. Should the Examiner believe that a telephone or a personal interview may facilitate resolution of any remaining matters, he/she is respectfully requested to contact Applicant's undersigned representative at the number indicated below.

Respectfully submitted,



Joseph W. Schmidt
Reg. No. 36,920
Attorney for Applicant(s)

CARTER, DELUCA, FARRELL & SCHMIDT, LLP

445 Broad Hollow Road, Suite 225
Melville, New York 11747
Telephone: (631) 501 5700
Facsimile: (631) 501 3526

JWS